

² Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from April 28, 2016, the date of OWCP's last decision was October 25, 2016. Since using October 31, 2016, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is October 25, 2016, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has disability from work causally related to the accepted employment injuries for the period April 4, 2012 to May 1, 2015.

FACTUAL HISTORY

On December 16, 2014 appellant, then a 54-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that performing her daily job functions had contributed to a lower back injury. She identified December 23, 2011 as the date she first became aware of her medical condition, and July 28, 2014 as the date she became aware her condition was causally related to factors of her federal employment. Appellant's supervisor noted on the reverse of the claim form that appellant had not worked since 2012.

In a supplemental statement, appellant explained that on December 23, 2011 she felt pain in her low back while working. She also alleged that on a daily basis she moved containers weighing over 1,000 pounds, and she had to bend when loading and unloading mail. The employing establishment submitted a December 30, 2014 response, writing that it was not established that containers weighed over 1,000 pounds, and appellant had not provided information as to any specific work activity on December 23, 2011.

By letter dated February 24, 2015, OWCP requested that appellant submit additional factual and medical evidence to establish the claim. Appellant was afforded 30 days to submit this additional evidence.

Appellant submitted a March 23, 2015 narrative statement asserting that some medical documentation she had submitted to the employing establishment was missing from the record. She referred to an April 5, 2012 "incident." Appellant cited employing establishment regulations noting that containers had a maximum load capacity of 1,200 pounds, asserting that her job duties of pushing, bending, and lifting had resulted in long-term damage to her back.

In a report dated March 2, 2015, Dr. Deborah Eisen, a Board-certified family practitioner, provided a history that appellant felt pain on December 23, 2011 while working as a mail handler. She noted that appellant moved heavy containers and bends to take mail out of the containers. Dr. Eisen provided results on examination and reported that an April 12, 2012 magnetic resonance imaging (MRI) scan showed small disc bulges at L4-5 and L5-S1. She diagnosed lumbar sprain/strain and lumbar disc bulge. Dr. Eisen opined that, based on the work activities on December 23, 2011 and physical examination findings, appellant's work activities would cause the diagnosed conditions to occur.

On March 30, 2015 OWCP accepted the claim for lumbar sprain and lumbar disc bulge. Appellant was advised to claim wage loss by submitting a Form CA-7 claim for compensation.

³ 5 U.S.C. § 8101 *et seq.*

Appellant filed a Form CA-7 claim for compensation for wage loss from April 4, 2012 to April 3, 2015. A second Form CA-7 was filed on May 4, 2015, claiming compensation from April 4 to May 1, 2015.

With respect to medical evidence on April 30, 2015 appellant submitted reports from Dr. Panagiotis Zenetos, a Board-certified anesthesiologist. In a June 8, 2012 note, Dr. Zenetos diagnosed lumbar radiculopathy and opined that appellant was totally disabled. In a report dated April 10, 2013, he indicated that appellant complained of lumbar pain. Dr. Zenetos also reported that appellant had left leg, heel, back, left buttocks, left thigh, and left knee pain from a job-related injury since January 24, 2012.⁴ He found that appellant was able to work until April 4, 2012. Dr. Zenetos provided results on examination, diagnosed lumbar radiculopathy, and opined that appellant was disabled from work.

Dr. Zenetos reported on May 1, 2015 that appellant had pain that began from lifting mail, and appellant also indicated that the pain was from a December 23, 2011 work injury. He again diagnosed lumbar radiculopathy. In a June 15, 2015 note, Dr. Zenetos wrote that appellant was disabled from May 2012 to July 2013 due to lumbar radiculopathy. He wrote, "This condition resulted [from] moving heavy postal containers and repetitive bending which impacted her muscles and disks in her lumbar region."

Appellant also submitted a brief report from Dr. Eisen dated May 14, 2015. Dr. Eisen indicated that appellant was seen on July 28, 2014, and at that time she was totally disabled. He wrote that appellant was currently able to work with restrictions that included no pushing greater than 30 pounds.

In a brief note dated May 15, 2015, Dr. Jeffrey Dermksian, a Board-certified orthopedic surgeon, reported that appellant had sprained her back with a disc bulge on December 23, 2011. He further wrote, "This condition resulted from moving heavy postal containers and repetitive bending, which impacted the lumbar region. [Appellant] was totally incapacitated and unable to work from [March 5 to April 2, 2012]."

By decision dated June 5, 2015, OWCP denied appellant's claim for wage-loss compensation commencing April 4, 2012. It found the medical evidence of record was insufficient to establish employment-related disability for the period claimed.

On July 1, 2015 appellant requested a hearing before an OWCP hearing representative. She submitted a July 16, 2015 report from Dr. Aric Hausknecht, a Board-certified neurologist, who provided a history that appellant had a work-related injury on December 23, 2011. Dr. Hausknecht provided results on examination and diagnosed lumbosacral derangement. He advised appellant to continue physical therapy. Dr. Hausknecht opined that her condition "is causally related to the injuries sustained on [December 23, 2011]." Appellant also submitted reports from Dr. Zenetos regarding continuing treatment for lumbar radiculopathy.

⁴ The record indicates that appellant filed a traumatic injury claim (Form CA-1) with respect to an alleged January 24, 2012 employment incident. That claim is not before the Board on appeal.

A hearing was held on February 16, 2016. Appellant indicated that in April 2012 she had requested light-duty work, but was sent home. She stated that she had been working light duty since September 2015.

Appellant submitted additional medical evidence in support of her claim. The evidence included an April 5, 2012 note from Dr. Dermksian, who wrote that appellant needed light duty as “the nature of her employment causes the injury/condition to worsen.” He indicated that appellant should have a 10-pound lifting restriction and recommended physical therapy. In a note dated April 23, 2012, Dr. Steven Simons, a Board-certified family practitioner, asserted that appellant had lumbar paraspinal myofascial pain from repetitive bending and lifting. He indicated that appellant should work light duty. Appellant also provided a July 28, 2014 report from Dr. Eisen, similar to the March 2, 2015 report submitted earlier.⁵

By decision dated April 28, 2016, OWCP’s hearing representative affirmed the June 5, 2015 OWCP decision. The hearing representative found that the medical evidence of record was insufficient to establish employment-related disability for the period claimed.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁷ The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.⁸

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative, and substantial medical evidence.⁹ Findings on examination are generally needed to support a physician’s opinion that an employee is disabled from work. When a physician’s statements regarding an employee’s ability to work consist only of repetition of the employee’s complaints without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.¹⁰ The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which

⁵ The diagnosis in this report was lumbar herniated disc; the March 2, 2015 diagnosis was noted as disc bulge.

⁶ *Supra* note 3.

⁷ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ 20 C.F.R. § 10.5(f); *see e.g.*, *Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury, but no loss of wage-earning capacity).

⁹ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁰ *Id.*

compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹¹

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.¹² Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹³ The opinion of the physician must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship.¹⁴

ANALYSIS

In the present case, appellant stopped work in April 2012. She did not file an occupational disease claim (Form CA-2) until December 31, 2014. Appellant alleged that she had sustained a lumbar condition as a result of work activity that included pushing heavy containers, lifting, and bending. OWCP accepted that appellant sustained lumbar disc bulge and lumbar sprain. Appellant has claimed wage-loss compensation from April 4, 2012 to May 1, 2015. The issue is whether appellant has met her burden of proof to establish disability from her work as a mail handler causally related to the accepted employment injuries.

The Board has reviewed the medical evidence of record and finds that it is insufficient to establish that the claimed period of disability was causally related to the accepted conditions. The issue of whether a claimant's disability is related to an accepted condition is a medical question, which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.¹⁵ In this case appellant has referred to experiencing pain on December 23, 2011. However, she did not file a traumatic injury claim based on an alleged December 23, 2011 incident, and has not described any particular activity on that date. The record indicates that appellant did file a separate claim for traumatic injury with respect to a January 24, 2012 incident. Any medical report must have clear understanding of appellant's work duties, as well as a proper medical and factual history.

The initial reports from April 2012 are brief notes that are of little probative value. Dr. Dermksian briefly reported that appellant required light duty because her condition had worsened due to the "nature of her employment." He did not provide a history, results on examination, a diagnosis, or a reasoned opinion on causal relationship with the identified

¹¹ *Id.*

¹² *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹³ *Elizabeth Stanislaw*, 49 ECAB 540 (1998).

¹⁴ *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁵ *Sandra Pruitt*, 57 ECAB 126 (2005).

employment factors.¹⁶ Similarly, Dr. Simons April 23, 2012 report is also brief and lacking in the above *indicia* of a probative medical report.¹⁷

Dr. Zenetos diagnosed lumbar radiculopathy in a June 8, 2012 note. He opined, without detail, that appellant was totally disabled. However, lumbar radiculopathy was not an accepted condition, nor did he discuss causal relationship with the identified employment factors.¹⁸ In his April 10, 2013 report, Dr. Zenetos referred to a January 24, 2012 injury, without further explanation. He did not provide a complete history or a rationalized medical opinion on disability. In a May 1, 2015 report, Dr. Zenetos provided a general statement that appellant was disabled from May 2012 to July 2013 due to lumbar radiculopathy. He did not provide a proper history, as he referred briefly to lifting mail, but also to a December 23, 2011 work injury. As noted, appellant had reported pain on December 23, 2011, but had not provided additional detail. There is no indication appellant received any contemporaneous treatment with respect to December 23, 2011 symptoms. Dr. Zenetos did not provide medical rationale to support an opinion regarding an employment-related disability. The Board finds the reports from Dr. Zenetos do not provide a rationalized medical opinion as to employment-related disability from May 2012 to July 2013.¹⁹

Dr. Eisen treated appellant on July 28, 2014. At that time she diagnosed lumbar sprain and lumbar herniated disc. In her March 2, 2015 report, Dr. Eisen diagnosed a lumbar disc bulge, but she did not discuss disability from work. In a brief May 14, 2015 report, she opined that appellant was totally disabled, but did not provide further explanation.²⁰ Dr. Hausknecht did not discuss disability from work in his July 16, 2015 report.²¹

It is appellant's burden of proof to establish a specific period of employment-related disability for work. The Board has long held that medical conclusions unsupported by rationale are of diminished probative value.²² None of the medical reports explain, with sufficient rationale, how her accepted conditions caused her to be disabled from work as of April 4, 2012.²³ The Board finds that appellant did not meet her burden of proof in this case.

¹⁶ A probative medical report includes findings on examination, a firm diagnosis, and medical rationale supporting the opinion offered. *K.W.*, Docket No. 16-1176 (issued November 2, 2016).

¹⁷ *Id.*

¹⁸ See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury).

¹⁹ See *supra* note 13.

²⁰ *Id.*

²¹ A report containing no opinion on causal relationship is of limited probative value. See *B.H.*, Docket No. 16-1553 (issued March 27, 2017).

²² See *Albert C. Brown*, 52 ECAB 152 (2000).

²³ See *G.B.*, Docket No. 16-1003 (issued December 5, 2016).

On appeal, counsel contends that the evidence shows appellant could not perform her mail handler duties. For the reasons discussed above, the Board finds the evidence is insufficient to meet appellant's burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established disability from work causally related to the accepted employment injuries for the period April 4, 2012 to May 1, 2015.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 28, 2016 is affirmed.

Issued: June 9, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board